

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

February 18, 2009 Session

**IN THE MATTER OF A. T.**

**Appeal from the Juvenile Court for Lincoln County**  
**No. J34-04A     Andrew Myrick, Judge**

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**No. M2008-02104-COA-R3-PT - Filed March 26, 2009**

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Father appeals the termination of his parental rights on the grounds of persistent conditions and abandonment by willful failure to make reasonable payments in support of his child. He contends the Department failed to make reasonable efforts to reunify the family, that the evidence was insufficient to establish any ground for termination, and that the evidence was insufficient to establish termination was in the child's best interests. Father also appeals contending the petition was illegally filed. We find no merit to any of Father's issues and affirm the termination of his parental rights.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

S. Craig Moore, Fayetteville, Tennessee, for the appellant, J.T.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore; Solicitor General; and Douglas Earl Dimond, Senior Counsel, for the Tennessee Department of Children's Services.

**OPINION**

This is an action to terminate the parental rights of J.T., the father of a five-year-old child. The child was removed from the custody of his parents on July 26, 2004, when it was discovered that the child, then three-months old, had sustained multiple skull fractures. The child has been in the custody of the Department of Children's Services ever since. The relevant facts and procedural history are as follows.

The child, born in March of 2004, is the child of J.T. (Father) and P.T. (Mother). On July 26, 2004, Mother took her then three-month-old child to the doctor for a regularly scheduled "well-baby" visit. The child was first examined by the nurse who noticed a yellowish discoloration upon the child's head. Theresa Morrison, M.D., who then examined the child, described seeing a "large, green, yellow, old-appearing bruise" on the right side of the child's head, and described the child as

scrawny, underweight, and irritable when moved. Dr. Morrison also noticed a “dent” in the child’s head and ordered a CAT scan. The CAT scan revealed multiple skull fractures. The explanations provided by Mother for the injury ranged from spider bite, to discoloration caused by a yellow blanket the child slept on, to a toy being dropped on the baby’s head, none of which the doctor deemed as plausible. Due to her concerns that the child might be a victim of abuse, Dr. Morrison immediately notified the police and the Department of Children’s Services (the “Department”), and the Department took the child into custody that day.

Two days later, the Department filed a petition to declare the child dependent and neglected. On February 9, 2005, the juvenile court found the child dependent and neglected due to severe child abuse. This order was amended in June 2005 to reflect that the court had found the child dependent and neglected due to “severe child neglect” based on the parents’ failure to notice and seek help for their son’s obvious injury. The amended order was not appealed.

From the time the child was taken into custody, the Department began working with Mother and Father in an effort to assist them to reach the goals of the plan. Angela Cothren, the first caseworker, developed the first permanency plan on August 16, 2004. The plan required a parenting evaluation, and also required that the parents cooperate with the Department to determine the cause for the child’s injuries. Pursuant to the plan, Tim McConkey, Senior Psychological Examiner, performed the first of three parenting assessments on August 27 and 28, 2004. Mr. McConkey reported no “obvious pathology or trait factors” in his initial evaluation of Father.

The relationship between Mother and Father, which was already fraught with domestic conflict, began to further deteriorate. Mother obtained an order of protection against Father in August 2004 following an incident where Father threatened her with a gun; however, they soon reconciled for a brief period of time. In October 2004, Mother informed the Department that she believed Father had serious anger problems; she also told them that the child’s skull fractures were possibly caused by Father smashing the child’s head against a wall in their home. As time passed, the caseworkers began experiencing problems with Father. A significant incident occurred on March 10, 2005, when Ms. Cothren first mentioned to Father the possibility of moving the child to Alabama to live with Mother’s father. She said Father became so angry when he learned of this that she felt threatened by him. Shortly thereafter, Ms. Cothren requested to be removed from the case. In April 2005, following Father’s alleged threats against Department employees, the Department filed a motion to suspend Father’s visitation. Following a hearing on that motion in July 2005, Father’s visitation was suspended. The order stated that Father could petition to reestablish visitation after six weeks; however, his visitation rights were never restored.

In July of 2005, Ms. Cothren was removed from the case, as she had requested, and Leslie Jones was assigned to be the new caseworker. Following Ms. Jones’ assignment, a second permanency plan with Father was entered into August 10, 2005. It was during the next several weeks that the Department made the decision to file a petition to terminate Father’s parental rights.

On October 26, 2005, the Department filed the petition to terminate the parental rights of Father on the grounds of failure to comply with the requirements of the permanency plan, failure to provide a suitable home, abandonment by failure to visit, persistent conditions, and abandonment by willful failure to support. Soon thereafter, Father filed an Answer opposing the petition to terminate his parental rights.<sup>1</sup> For reasons not fully justified by the record, the matter did not go to trial until July 18, 2008.<sup>2</sup>

In the interim, a new permanency plan was entered into in October 2006. The most significant change in the permanency plans was that adoption became the sole goal of the plan. In January 2007, Mother expressed concerns to her caseworker regarding Father's alcohol and drug issues and domestic violence, which prompted a second evaluation by Mr. McConkey. During an evaluation in February 2007, Mr. McConkey questioned the truthfulness of Mother and Father. As a consequence, he recommended that Father engage in individual counseling or anger management.<sup>3</sup>

In May 2007, Anna Rose succeeded Leslie Jones as the caseworker. In January 2008, Mother, along with her caseworker, Ms. Rose, attended a Child and Family Team Meeting, at which time Mother expressed new concerns regarding Father's violent behavior. Among other things, Mother stated that Father becomes violent when using alcohol and that she feared for her safety. She stated that Father had made threats against Department employees who were involved in the case and stated that she was concerned for their safety as well as her own. During this meeting she also described an incident that occurred in September 2007, when Father came home drunk, pulled her into his car, and began driving to Huntsville, Alabama where her father lived. She stated that he would not let her out of the car, and that he threatened to kill her and her father. Before they got to her father's home in Alabama, a police officer stopped their car at which time Father was arrested.

In March 2008, Mother again notified Ms. Rose that she did not feel safe around Father. As a consequence, the Department requested another assessment of Father, which McConkey performed on June 20, 2008. The results of this evaluation were significantly different from Father's previous evaluations. In his report, Mr. McConkey stated that up until this last evaluation, he had only observed "an over-controlled and perhaps contrived presentation" by Father; however, after addressing the various alleged domestic violence incidents with Father, he found that Father "does not accept culpability for his behaviors and places blame on others." Mr. McConkey reported that he also noted a significant change in Father's behavior, that he was "significantly more agitated than when I had seen him in the past. He cursed frequently and disparaged most persons involved in this

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<sup>1</sup>The Department also sought to terminate Mother's parental rights. Like Father, Mother filed an Answer opposing the petition, and the action against her was tried with that against Father. Following the trial of this matter, the circuit court found no basis upon which to terminate Mother's parental rights and the Department did not appeal that decision. Therefore, Mother's rights have not been terminated and are not at issue in this appeal.

<sup>2</sup> The trial on the termination petition was not held until July 18, 2008, due in part to the fact that two judges recused themselves. The reason for the other delays is not explained in the record.

<sup>3</sup>This was added as a requirement in a Permanency Plan entered February 28, 2008.

matter.” Despite Father having obtained counseling and attended anger management classes, Mr. McConkey found Father unable “to articulate what he learned in anger management or the strategies that he uses to derail potential episodes of acting out.” Mr. McConkey outlined his new clinical diagnosis of Father:

The clinical picture reveals an individual who minimizes fault and in this regard the alcohol and drug assessment was of little value during the last assessment. For example [Father] responded N/A on the written questionnaire to the statement “At what age did you first use any recreational substance?” When asked to indicate which substance he had ever used including cigarettes and various forms of alcohol, he did not endorse any item. . . .

[Father] demonstrates a preponderance of features, traits, and characteristics found in personality disorders. There is also reason to suspect that he may actually be deteriorating in reasoning and decision making to a degree indicating other clinical disorders too. I am not comfortable that he is truthful regarding his alcohol or drug use and suspect that a critical incident is looming (acting out in some capacity). Unfortunately persons with personality disorders are not usually receptive to or benefit from traditional therapies. [Father] appears to have spent considerable energy in negative efforts to coerce this situation as opposed to sincerely making progress toward meeting DCS permanency plan recommendations.

I offer grave reservations in regards to [Father’s] ability to parent his son and also caution those working in this situation that he intimates threats without actually using exact terms. . . .

This is certainly a potentially volatile situation and caution is encouraged for those involved.

Based upon his most recent evaluation and observations, Mr. McConkey diagnosed Father as having a personality disorder.

On June 28, 2008, a week after Mr. McConkey’s latest evaluation of Father, Father was arrested following a high-speed police chase during which he was driving a semi-tractor truck at excessive speeds while under the influence. Father was charged with driving under the influence of an intoxicant, resisting arrest, and evading arrest by motor vehicle. The record indicates that as the police were attempting to stop Father’s vehicle, he attempted to evade arrest by driving his semi-tractor truck into oncoming traffic at speeds in excess of 80 miles per hour.

The trial took place on July 18, 2008. Mother, Father, various Department caseworkers, and several other witnesses testified to the events which occurred during the substantial time period that the minor child had been in Department custody. Father testified at trial that he did not have a temper which would cause him to be physical, that he did not think he had an alcohol problem, and

that he did not think he was dangerous when he drank. Father also testified that he made \$1,200 a week during the time period that he was ordered to pay \$303.00 a month in child support. The child support payment records introduced at trial showed that Father had made only three payments of support in the four months preceding the filing of the termination petition, which totaled only \$371.66.

The trial court issued its final judgment on August 18, 2008 finding the Department had proven the grounds of persistent conditions and abandonment by failure to provide support. On the ground of persistent conditions, the court found that the Department had demonstrated that the child had been removed from the home for a period greater than six months and that conditions existed which would prevent the child's safe return to Father. The court identified these conditions as:

- a. The father's personality disorder indicated in the 2008 evaluation wherein Dr. McConkey<sup>4</sup> stated he had grave reservations about the father's ability to parent his son;
- b. The incidents of domestic violence including the 2004 incident involving the gun and the 2007 incident in Huntsville, Alabama;
- c. The father's alcohol use. Although the record does not clearly establish the father has an alcohol problem, there is certainly proof that the father was not forthcoming with Dr. McConkey regarding his alcohol use. The gun incident in 2004, the incident in Huntsville, Alabama, and the recent arrests for DUI, evading, and reckless endangerment all involve alcohol. Further, the mother testified he was a "monster" when he drank.
- d. The father's threatening behavior toward all those involved in the case in 2005, toward his father-in-law, and toward Dr. McConkey during the most recent psychological assessment.

The court went on to find by clear and convincing evidence that the Department made reasonable efforts to reunite the family, that these efforts were to no avail, and that there was little likelihood these conditions that led to the child's removal would be remedied so that the child could be safely returned to Father.

The court found clear and convincing evidence to terminate Father's parental rights on the ground of abandonment by failure to support based upon Father's testimony that he was gainfully employed as a truck driver during the time period at issue, that he was ordered to pay \$303 a month in child support, and that during the relevant time period of June 26, 2005 to October 26, 2005 Father made only three payments totaling \$371.66. The court also noted that Father's non-payment

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<sup>4</sup>The trial court incorrectly identified Mr. McConkey as a doctor; he is a Senior Psychological Examiner with a master's degree in education, licensed by the Tennessee Health Related Board of Examiners in Psychology.

was willful and that his explanation for not paying support, that his visitation had been taken away, did not relieve him of his duty to pay support.

The court also found that termination was in the best interest of the child based upon Father's failure to adjust his circumstances, conduct or conditions to make it safe for the child to return home, lack of a meaningful relationship between the child and Father, proof regarding psychological and emotional abuse of Mother by Father, evidence of neglect against the minor child based upon his skull fractures which went unnoticed, and the findings of Mr. McConkey in regard to Father's ability to parent. Based upon its findings on the grounds and best interest factors, the court terminated Father's rights, which he now appeals.

Father contends on appeal that the evidence is insufficient to establish the Department made reasonable efforts to assist Father to accomplish the goals of the plan, that the evidence is insufficient to establish the ground of abandonment or the ground of persistent conditions; and the evidence is insufficient to establish that termination is in the child's best interests. He also contends the petition to terminate his parental rights was "illegally filed," because its "filing was contrary to the statutory prerequisites."

#### ANALYSIS

Parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Hawk v. Hawk*, 855 S.W.2d 573, 577 (Tenn. 1993). This right is superior to the claims of other persons and the government, yet it is not absolute. *In re S.L.A.*, 223 S.W.3d 295, 299 (Tenn. Ct. App. 2006).

Parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). The petitioner has the burden of proving that there exists a statutory ground for termination, such as abandonment or failing to remedy persistent conditions that led to the removal of the child. Tenn. Code Ann. § 36-1-113(c)(1); *Jones*, 92 S.W.3d at 838. Only one ground need be proved, so long as that ground is proved by clear and convincing evidence. *See In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003). In addition to proving one of the grounds for termination, the petitioner must prove that termination of parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2); *In re F.R.R.*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best interests of the child). Therefore, a court may terminate a person's parental rights if (1) the existence of at least one statutory ground is proved by clear and convincing evidence and (2) it is clearly and convincingly established that termination of the parent's rights is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Whether a statutory ground has been proved by the requisite standard of evidence is a question of law to be reviewed de novo with no presumption of correctness. *In re B.T.*, No. M2007-01607-COA-R3-PT, 2008 WL 276012, at \*2 (Tenn. Ct. App. Jan. 31, 2008) (no Tenn. R. App. P. 11 application filed) (citing *In re Adoption of A.M.H.*, 215 S.W.3d at 810).

#### REASONABLE EFFORTS MADE BY THE DEPARTMENT

Father contends the Department failed to prove that it made reasonable efforts to return the child to Father. We find the evidence clearly and convincingly establishes that the Department made reasonable efforts to reunify the family and that Father refused to cooperate with the Department. Our discussion of this issue follows our analysis of the issue of persistent conditions.<sup>5</sup>

#### ABANDONMENT BY FAILURE TO SUPPORT

Parental rights may be terminated upon the ground of abandonment for willfully failing to support, or willfully failing to make reasonable payments toward the support of the child. Tenn. Code Ann. § 36-1-102(1)(A)(i). A parent abandons a child if for a period of four consecutive months immediately preceding the filing of a petition to terminate the parental rights of the parent, it is established that the parent willfully failed to support, or willfully failed to make reasonable payments toward the support of the child. Tenn. Code Ann. § 36-1-102(1)(A)(i).

A “willful failure” of a parent to pay support under the termination statutes is “willful” if the parent is “aware of his or her duty to support, has the capacity to provide the support, makes no attempt to provide support, and has no justifiable excuse for not providing the support.” *State Dept. of Children’s Servs. v. Culbertson*, 152 S.W.3d 513, 524 (Tenn. Ct. App. 2004) (quoting *In re Adoption of Muir*, No. M2002-02963-COA-R3-CV, 2003 WL 22794524, at \*5 (Tenn. Ct. App. Nov. 25, 2003)). “The willfulness of particular conduct depends upon the actor’s intent. Intent is seldom capable of direct proof, and triers-of-fact lack the ability to peer into a person’s mind to assess intentions or motivations. . . . Accordingly, triers-of-fact must infer intent from the circumstantial evidence, including a person’s actions or conduct.” *Id.* (quoting *In re Adoption of Muir*, 2003 WL 22794524, at \*5).

The Department filed its Petition to Terminate Parental Rights on October 26, 2005. Therefore, the relevant statutory period for determining this ground was June 26, 2005 to October 26, 2005. Father’s child support obligation was \$303 per month yet Father paid only \$371.66 over the critical four month period. Father admitted at trial that he was employed during this period and able to make payments, and that he refused to make payments because he felt it was “due justice,” since his visitation had been suspended. This, however, does not excuse a parent of his obligation

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<sup>5</sup> We typically address the issue of the reasonableness of the Department’s efforts to assist a parent to accomplish the goals of his permanency plan prior to addressing the grounds for termination; however, in this case, we determined it would be more expedient to address the issue immediately following the discussion of the persistent conditions that prevent the return of the child into Father’s care.

to support his child, as denial of a parent's visitation rights is no defense in an action for child support. *See Hester v. Hester*, 443 S.W.2d 28, 33 (Tenn. Ct. App. 1969).

A parent who willfully fails to make reasonable payments toward the support of his child for the period of four months prior to the filing of the petition to terminate has abandoned the child. *See* Tenn. Code Ann. § 36-1-102(1)(A)(i). The evidence in the record convincingly establishes that for the relevant four month period, Father willfully failed to make reasonable payments toward the support of the child. We, therefore, affirm the trial court's finding that Father abandoned his child by willfully failing to make reasonable payments toward the support of his child for the requisite period.

#### PERSISTENT CONDITIONS

The ground of persistent conditions is statutorily defined as when a child has been removed from the home of the parent or guardian by order of a court for a period of six months and:

- (A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
- (B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
- (C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3)(A)-(C) (2008).

The minor child was removed from the home in July 2004 after the discovery that the then three-month-old child had sustained skull fractures. Thereafter, the child was adjudicated dependent and neglected based upon a finding of "severe child neglect." During the four years that followed, in spite of the Department's reasonable efforts to assist him, Father failed to acknowledge his obvious and serious anger problems, and the association of those problems with his continued alcohol abuse. As a consequence, during the four years, Father continued to act in a manner that posed a threat to Mother, caseworkers, police officers, and the public. Thus, the conditions that led to the child's removal, as well as other conditions which in all probability would cause the child to be subjected to further abuse or neglect, persist, which prevent the child's safe return to the care of Father.



As the record reflects, during the three years following the removal of the child, and in spite of the Department's best efforts, Father continued to pose a threat to others, including Mother, caseworkers, his father-in-law, police, and the public. Specifically, Father continued to engage in domestic violence after the child's removal, and Father's statements to caseworkers at the Department were considered by them to constitute a serious threat. For example, when Ms. Cothren testified that when she informed Father she was considering placing the child with Mother's father in Alabama, Father responded by stating that he would beat his father-in-law's brains out. Ms. Cothren felt so threatened by Father that she requested to be removed from the case. Despite Father's denial of an alcohol problem, Mother testified that Father was "a monster" when he drank. This testimony was corroborated by several of Father's actions. The fact that Father's anger and alcohol problems persist is evident from the fact that just a few weeks before the trial, Father was arrested following a high-speed police chase during which he was driving a semi-tractor truck, under the influence, into on-coming traffic in an attempt to evade arrest. Just one week prior to this troubling event, Father was re-evaluated by Mr. McConkey and diagnosed with a personality disorder. Further, Mr. McConkey stated that he believed Father was deteriorating in his reasoning and decision-making, possibly indicating other clinical disorders, and that Father was being untruthful regarding his alcohol and drug use. Mr. McConkey also stated that persons with personality disorders are seldom receptive to, and usually do not benefit from, traditional therapies. Furthermore, Mother testified at trial that she believed Father constituted a threat of harm to any child entrusted to his care.

Persistent conditions exist when a child has been removed from the home of the parent by order of a court for a period of six months, and conditions that in all reasonable probability would cause the child to be subjected to further abuse persist which prevent the child's safe return to the care of the parent, there is little likelihood that these conditions will be remedied at an early date, and the continuation of the parent and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home. *See* Tenn. Code Ann. § 36-1-113(g)(3)(A)-(C) (2008). The evidence in the record clearly and convincingly establishes each of the statutory factors set forth in Tenn. Code Ann. § 36-1-113(g)(3)(A)-(C) necessary to prove the ground of persistent conditions. We, therefore, affirm the trial court's finding that the statutory ground of persistent conditions exists for which Father's parental rights may be terminated, if termination of his parental rights is determined to be in the best interests of the child.

#### REASONABLE EFFORTS

The Department had the responsibility to exercise reasonable care and diligence to provide services reasonably necessary to assist Father in fulfilling his obligations under the permanency plans. Tenn. Code Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d at 547; *In re C.M.M.*, 2004 WL 438326, at \*7-8. In that regard, the Department's employees had an affirmative duty to utilize their education and training to assist the parent in a reasonable way to address the conditions that led to

the child's removal and to complete the tasks stated in the plan.<sup>6</sup> *In re Giorgianna H.*, 205 S.W.3d at 518-19; *In re J.L.E.*, No. M2004-02133-COA-R3-PT, 2005 WL 1541862, at \*14 (Tenn. Ct. App. June 30, 2005). Although the Department bears the responsibility to make reasonable efforts toward reunification, the road to reunification is a "two-way street." *State Dep't of Children's Servs. v. S.M.D.*, 200 S.W.3d 184, 198 (Tenn. Ct. App. 2006)). A parent desiring to be reunited with his child has a corresponding duty to "make reasonable and appropriate efforts to rehabilitate themselves and to remedy the conditions that required the Department to remove " their child from custody. *In re A.R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at \*16 (Tenn. Ct. App. Dec. 13, 2007) (quoting *In re Giorgianna H.*, 205 S.W.3d at 519). Accordingly, although the Department bears a responsibility to facilitate reunification, it does not bear the entire responsibility. *Id.* (citing *State Dep't. of Children's Servs v. S.M.D.*, 200 S.W.3d at 198).

As our discussion in the foregoing portions of this opinion reveal, Father was easily and often agitated, and he disparaged most persons involved in this case. Despite having been provided with counseling and anger management classes, Father failed to pay attention while attending the classes, which is evident from the fact he was unable to articulate what he learned in anger management when asked to do so by Mr. McConkey. Father was provided with an alcohol and drug assessment; however, he rejected the benefits this service may have afforded him. This is evident from the fact that Mr. McConkey determined that Father is "an individual who minimizes fault and in this regard the alcohol and drug assessment was of little value." Mr. McConkey also determined that Father was not "truthful regarding his alcohol or drug use." Further, as Mr. McConkey noted, Father spent considerable energy "in negative efforts to coerce this situation as opposed to sincerely making progress toward meeting DCS permanency plan recommendations," and persons with personality disorders like Father "are not usually receptive to or benefit from traditional therapies." Ironically, although tragic, one week after telling Mr. McConkey that he did not have an alcohol or anger problem, Father was arrested for driving under the influence and for evading arrest by driving his truck into oncoming traffic during a high speed police chase.

Although the Department's efforts were not herculean, and need not be, they were reasonable, and Father did not cooperate with the Department's efforts to assist him; to the contrary, the Department's efforts were thwarted by Father's refusal to acknowledge his alcohol and anger problems, both of which are clearly out of control.

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<sup>6</sup>Reasonable efforts are statutorily defined as the "exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family." Tenn. Code Ann. § 37-1-166(g)(1). The factors the courts are to use to determine reasonableness include: (1) the reasons for separating the parents from their children, (2) the parents' physical and mental abilities, (3) the resources available to the parents, (4) the parents' efforts to remedy the conditions that required the removal of the children, (5) the resources available to the Department, (6) the duration and extent of the parents' efforts to address the problems that caused the children's removal, and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the Department's efforts. *In re Tiffany B.*, 228 S.W.3d 148, 158-59 (Tenn. Ct. App. 2007) (footnote omitted) (citing *In re Giorgianna H.*, 205 S.W.3d at 519).

After considering the above facts and the entire record, we find clear and convincing evidence that the Department made reasonable efforts to assist Father in this matter.

#### BEST INTERESTS OF THE CHILD

If one statutory ground for termination is proven by clear and convincing evidence, a parent's rights may be terminated if it is also determined that termination of the parent's rights is in the child's best interest. *See In re D.L.B.*, 118 S.W.3d at 367. We have affirmed the trial court's finding that two grounds exist upon which Father's rights may be terminated. Therefore, we must now determine whether termination of Father's parental rights is in the child's best interests.

A non-exclusive list of statutory factors to consider is set forth in Tenn. Code Ann. § 36-1-113(i). The list includes determining whether the parent has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent; the parent has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible; a meaningful relationship has otherwise been established between the parent and the child; the parent has shown brutality, physical, emotional or psychological abuse, or neglect toward the child, or another adult in the family; there is such use of alcohol as may render the parent consistently unable to care for the child in a safe and stable manner; or the parent's mental and/or emotional status would be detrimental to the child or prevent the parent from effectively providing safe and stable care and supervision for the child. *See* Tenn. Code Ann. § 36-1-113(i)(1)-(9). The foregoing list is not exhaustive and the statute does not require that every factor apply for a court to find that termination is in a child's best interest. *State of Tenn., Dep't of Children's Servs. v. L.H.*, No. M2007-00170-COA-R3-PT, 2007 WL 2471500, at \*7 (Tenn. Ct. App. Aug. 31, 2007) (*citing In re S.L.A.*, 223 S.W.3d 295, 301 (Tenn. Ct. App. 2006)).

The trial court determined that termination was in the best interest of the child based upon several statutory factors. The trial court found that Father had not made an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in Father's care. The court found that the 2004 incident where Father threatened Mother with a gun, the 2007 domestic dispute in Huntsville, Alabama, the 2008 assessment by McConkey, and the 2008 arrest of Father on charges of driving under the influence and evading arrest, demonstrated that Father's conduct had not improved, but continued to be volatile.

The trial court also found that Father had failed to effect a lasting adjustment after reasonable efforts by social service agencies. The court also found that Father had been under a permanency plan since 2004 when the minor child was taken into custody, and that although Father had completed parenting assessments, anger management classes, and individual counseling, serious concerns still remained concerning Father's ability to parent. The court also found that Father had engaged in "psychological and emotional abuse" against Mother, and that Father may abuse alcohol to the point of becoming dangerous. The assessment performed by Mr. McConkey in June of 2008, as well as Father's arrest on serious charges in 2008, are clear and convincing evidence concerning

Father's abuse of alcohol, his deteriorating mental state, and his inability to safely parent the child. The record also shows that the Father has no meaningful relationship with the child.

The best interests of the child are to be determined from the perspective of the child rather than the parent, *see L.H.*, 2007 WL 2471500, at \*7 (citing *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004)), and we find that the evidence in the record clearly and convincingly supports the trial court's finding that termination of Father's parental rights was in the child's best interests. We, therefore, affirm the trial court on this issue.

#### THE VALIDITY OF THE PETITION AS FILED

Father presented an additional, indeed novel, argument that the petition to terminate his parental rights was "illegally filed," because the petition was not based on any of the grounds set forth in Tenn. Code Ann. §36-1-113(h)(1). This, of course, is a meritless argument because the grounds set forth in Tenn. Code Ann. §36-1-113(h)(1) are not the only grounds upon which a parent's rights may be terminated. They are simply the grounds for which the Department is *required* to file a petition to terminate, if it finds any of the stated grounds exist, as distinguished from the grounds set forth in Tennessee Code Annotated § 36-1-113(g), for which the Department may file a petition to terminate should any of the grounds specified in the statute exist.

Tennessee Code Annotated § 36-1-113(g) states "[i]nitiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g)." The petition in this action was based on grounds set forth in Tenn. Code Ann. § 36-1-113(g); therefore, the petition to terminate Father's rights was properly and legally initiated.

#### **IN CONCLUSION**

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the Department of Children's Services due to Father's indigency.

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FRANK G. CLEMENT, JR., JUDGE